

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,417

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare finding that her household has been overpaid Food Stamps and ANFC amounts and is liable for recoupment of those amounts.

FINDINGS OF FACT

1. The petitioner and her nine-year-old daughter receive both Food Stamps and ANFC as a two person household. 2. On November 17, 1994, the petitioner was notified by the Department of Social Welfare that her household had received \$1,193 in Food Stamps for which it was ineligible for the period from May of 1992, through November of 1992, due to the Department's failure to "receive correct, complete or timely information" from the household. A few days later the petitioner received a second notice which contained the same overpayment amount but revised the dates of overpayment from May of 1992 through December of 1992. She was advised by both notices that federal regulations required her to repay the overpayment.

3. The petitioner did not immediately appeal that notification and she was subsequently notified, on January 5, 1995, that \$14 of her \$140 Food Stamp grant would be recouped each month from her benefits, starting On February 1, 1995, until the recovery of the overpayment was completed, which was estimated to be in March of 2002.

4. On January 25, 1995, the petitioner was notified that she had also been overpaid ANFC benefits of \$3,948 for the period from May of 1992, to December of 1992, due to "unreported income from a job." She was notified that recoupment procedures would commence if she did not contact the Department by February 25, 1995.

5. On February 7, 1995, the petitioner appealed both the Food Stamp and ANFC overpayment and recoupment notices. Nevertheless, on February 8, 1995, she was notified that her ANFC would be recouped starting in March of 1995, at a rate of \$36 per month. That notice was rescinded when it was

discovered that she had timely appealed the overpayment notice and her ANFC benefits have continued at the previous level.

6. At the hearing, the Department presented evidence that from March through December of 1992, the petitioner and her daughter had been part of a Food Stamp and ANFC-Incapacity household which included the petitioner's now estranged husband. During that time, the petitioner's husband, a disabled man who suffered from alcoholism and drug addition, had been the family's liaison with the Department. During a series of interviews he failed to advise the Department that his wife was working part-time. The petitioner herself was unaware that her husband was not reporting her income. The husband's failure to report that income resulted in the household receiving \$3,948 more in ANFC benefits than it was entitled to and \$1,193 more in Food Stamp benefits. Upon an affidavit of a departmental fraud investigator, the husband's actions were referred to the state's attorney for criminal prosecution in June of 1993. However, by that time, the husband had fled the jurisdiction of the Vermont court and has still not been found. The state's attorney did not go forward with the fraud prosecution because the cost of finding and extraditing the petitioner were judged to be too great.

7. The petitioner does not dispute the Department's calculations of the overpaid amounts nor does she dispute that she was a member of her husband's household during each month that the overpayments occurred. Her husband handled all of the ANFC checks and she never personally saw them. She did use the Food Stamps herself to purchase food until December of 1992, when the family was notified of its ineligibility for benefits. When her husband's actions came to light and he fled the state, she initiated a divorce petition against him which was served through publication and which will be final in two months. The petitioner reapplied for benefits about a year later when she lost her job. She appeals the overpayment decisions because she does not feel it is fair that she be required to repay amounts overpaid to her household when she was completely innocent of any deception or wrongdoing which may have caused the overpayment. She asks that the state recover the overpayments from her soon to be ex-husband.

ORDER

The decision of the Department is affirmed.

REASONS

The Department's Food Stamp regulations, which follow the federal Food Stamp regulations, specifically require the Department to recover overpaid benefits from any and all adult members of the overpaid household:

All adult household members shall be jointly and severally liable for the value of any over issuance of benefits to the household. The State agency shall establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more Food Stamp benefits than it was entitled to receive.

F.S.M. § 273.18(a)

The petitioner in this case was indisputably an adult member of the household which received the overissuance of benefits from March through December of 1992. She is now an adult member of another

household which receives Food Stamp benefits. In that situation, the Department is required by the above regulation to establish a claim for recoupment of those overpaid benefits against her household.

As the petitioner has not been accused of intentionally violating program rules, and as the overpayment was clearly not the result of administrative error on the Department's part, a claim must be made against her on the basis of inadvertent household error. F.S.M. § 273.18(a)(1). In order to establish that claim, the Department need only show that the petitioner was an adult member of a household that was overpaid a certain amount of benefits because of a member's failure to report some critical information which affected the amount of benefits. Fair Hearing No. 12,682. The Department met that burden by introducing fraud investigation affidavits showing the amounts actually paid, the amount of unreported income and the amounts which should have been paid, none of which was contested by the petitioner.

As the existence and amount of the overpayment of Food Stamps have been established, the Department has the right and obligation to recover the overpaid amounts from the petitioner. The petitioner had received a valid demand letter (November 17, 1994) to which she had the right to respond within twenty days. F.S.M. § 273.18(d)(3)(iv). When she failed to respond, the Department had the authority to initiate recoupment from her current allotment. F.S.M. § 273.18(d)(4). As that was the action taken by the Department on February 1, 1995, it is well supported by the regulations.

The analysis with regard to the ANFC recoupment is similar to the one above. Those regulations provide that:

Overpayments of assistance, whether resulting from administrative error, client error or payments made pending a fair hearing which is subsequently determined in favor of the Department, shall be subject to recoupment. Recovery of an overpayment can be made through repayment by the recipient of the overpayment, or by reducing the amount of payment being received by the ANFC group of which he is a member.

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If the individual responsible for the overpayment is no longer eligible or moves to another assistance group, recovery shall be either from that individual, the original assistance group, the new assistance group or both, at the Department's option as determined by the District Director.

W.A.M. § 2234.2

Under the above regulation, an overpaid amount must be recovered through recoupment of benefits. These amounts can be recovered from the recipient of the overpaid amounts regardless of whether that recipient is the individual responsible for the overpayment and even if the person responsible for the overpayment leaves the assistance group. Fair Hearing No. 12,682. In this matter, the petitioner was one of the members of the original assistance group and as such was a recipient of the overpaid ANFC amounts. Under the above regulation, persons in the original overpaid assistance group are liable for recovery of the overpaid benefits. The fact that her husband, who appears to be the individual responsible for the overpayment, is no longer a part of the assistance group, does not bar the Department from establishing a claim and recouping from benefits currently received by the remaining members of the assistance group. The original group, which included the petitioner and her daughter, received benefits to which it was not entitled and, under the regulations, each and every member of that group is liable to pay that money back through recoupment, however innocent they may have been with regard to

creating the overpayment.

It must be concluded that the Department has sent the petitioner a valid notice of overpayment on her ANFC benefits as well. At this point, the Department may commence procedures to recoup that overpayment. The petitioner is advised that she has options and rights with regard to how that repayment might occur. She should read her notices of recoupment carefully and seek legal advice if she thinks it is necessary. The petitioner may also wish to consult with the attorney in her divorce action to see whether or not these amounts assessed against the petitioner might properly be established as debts owed by the petitioner's ex-husband to her as part of that proceeding.

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